



**Rule and Interpretive/Policy Statement Review Checklist**  
(This form must be filled out electronically.)

This form is to be used when the current version of the rule or interpretive or policy statement has not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-246 (Sales to or through a direct seller's representative)**

Date last adopted/issued: **December 31, 1999**

Reviewer: **Diane Bren**

Date review completed: **March 10, 2004**

Briefly explain the subject matter of the document(s): **Rule 246 explains the business and occupation (B&O) tax exemption provided by RCW 82.04.423 for out-of-state persons selling consumer products into Washington exclusively to or through direct seller's representatives. The rule provides definitions of pertinent terms, and explains the conditions that must be satisfied to claim the exemption.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Need:**

YES	NO	
<b>X</b>		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	<b>X</b>	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	<b>X</b>	Have the laws changed so that the document should be revised or repealed?



		(If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
<b>X</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain.

**The rule clarifies the application of RCW 82.04.423 and provides information necessary for taxpayers to verify that they qualify for the exemption.**

**3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:**

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	<b>X</b>	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	<b>X</b>	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.



**4. Clarity and Effectiveness:**

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

**Rule 246 is organized and written in a clear and concise manner. The statutory citations are correct.**

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
X		Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

**RCW 82.32.300 authorizes and directs the Department of Revenue to make and publish rules necessary to enforce the provisions of chapters 82.02 through 82.23B, 82.27, and 82.32 RCW.**

**RCW 82.01.060 authorizes the director of the Department to adopt such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the Department by the legislature.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.



**The Department has the exclusive authority to administer the tax exemption that is addressed in Rule 246.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	<b>X</b>	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**A cost benefit analysis was not completed for the last revision of this rule.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
<b>X</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>X</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	<b>X</b>	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**The information provided in this rule applies equally to all similarly situated taxpayers.**

**9. LISTING OF DOCUMENTS REVIEWED:** Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA) decisions, and Appeals Division decisions (WTDs) should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

**RCW 82.04.423 (Exemptions--Sales by certain out-of-state persons to or through direct seller's representatives.)**

**RCW 82.04.220 (Business and occupation tax imposed.)**

**RCW 82.04.250 (Tax on retailers.)**

**RCW 82.04.270 (Tax on wholesalers.)**

**RCW 82.04.290 (Tax on international investment management services or other business or service activities.)**

**RCW 82.08.020 (Tax imposed--Retail sales--Retail car rental.)**

**RCW 82.08.050 (Buyer to pay, seller to collect tax--Statement of tax--Exception--Penalties.)**

**RCW 82.12.020 (Use tax imposed.)**



**RCW 82.12.040 (Retailers to collect tax--Penalty.)**

**RCW 82.19.010 (Litter tax imposed--Report to the legislature--Time of collection.)**

**RCW 82.19.020 (Application to certain products.)**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

***The Stroh Brewery Co. v. State of Washington, Department of Revenue*, 15 P. 3d 692 (2001).**

**This decision confirms that the consumer product must not be sold in any permanent retail establishment by anyone (not just the buyer). Thus, whether the direct seller is selling to or through a direct seller's representative, the direct seller must limit where the product may be sold to take the B&O tax exemption.**

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Determination 99-223, 20 WTD 1 (2001), All commission income of a multi-level marketer must be included in its gross income for B&O tax purposes.**
- **Determination 01-074, 20 WTD 531 (2001), Taxpayer did not appeal a TI&E ruling that it does not meet the requirements of Rule 246 when the taxpayer's products are sold through kiosks at local shopping malls. These kiosks are considered to be permanent retail establishments.**
- **Determination 01-9915, 22 WTD 202 (2003), Washington's tax structure does not discriminate against interstate commerce. If anything, a potential tax benefit is provided to the out-of-state firm using a direct seller's representative, since no equivalent is granted to a Washington-based seller of goods in the home or non-permanent retail location.**

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

**Special Notice for Direct Sellers - Originally published February 1, 2000-Reissued April 2002**



**10. Review Recommendation:**

- \_\_\_\_\_ **Amend**
- \_\_\_\_\_ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- X**   **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- \_\_\_\_\_ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

**There is no need to amend Rule 246 at this time.**

**11. Manager action:** Date:   **April 30, 2004**  

  **AL**   Reviewed and accepted recommendation

Amendment priority (to be completed by manager):

- \_\_\_\_\_ 1  
\_\_\_\_\_ 2  
\_\_\_\_\_ 3  
\_\_\_\_\_ 4